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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,675	08/27/1999	GREGORY B. ARNOLD	M-617	8146

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

09/384,675

Applicant(s)

ARNOLD ET AL.

Examiner

Jared J. Fureman

Art Unit

2876

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10 February 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

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Art Unit 2876

Continuation of 9. Other (including any explanation in support of the above items):

Regarding item number 6: Appellants fail to specifically state the grouping of claims under the heading "GROUPING OF CLAIMS" on page 5 of the appeal brief. For example, claims 37, 51-54 and 56 share a common ground of rejection, thus, it appears that these claims should be grouped together. Many other claims also share a common ground of rejection. Even though appellants believe the claims of the group do not stand or fall together, the grouping of claims should be listed on page 5 of the appeal brief.

Furthermore, the brief states that the claims do not stand or fall together, yet does not present arguments in support thereof (for each claim) in the argument section. For example, it is argued that claim 52 is patentable for the same reasons as claim 51 (see page 15 of the appeal brief filed on 2/10/2003) (note that claim 52 is only one example, there are other occurrences). In response to appellant's argument that "... the Board will recognize the difference in scope and may make a distinction between these claims ..." (see page 2 of the response, filed on 6/23/2003), the Board will only consider arguments presented by appellants. Thus, if appellants believe that each claim is separately patentable from any other claim, appellants must explain/argue why each claim is separately patentable. With respect to the example of claim 52, appellants state, "With respect to claim 52, the same reasons in support of patentability apply as expressed with respect to claim 51 and it is not seen how the teachings of Axiohm can be applied to modify the Fukumoto et al device." (see page 15 of the appeal brief filed on 2/10/2003). This does not appear to explain how claim 52 is believed to be separately patentable. For example, what limitations do appellants believe make claim 52 separately patentable from claim 51? Without such explanation, the Board may not find each claim separately patentable from every other claim. It should also be noted that merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable (see MPEP 1206, item number 7 under "Appeal Brief Content").

Regarding item number 8: As noted by appellants in the response filed on 6/23/2003 (see paper number 25), in the appendix of claims, claim 37, line 6: "date" should be --data--, as appears in the after final amendment (filed on 2/10/2003, paper number 21). This error may only be corrected through the filing of an amended appeal brief.

On page 3 of the response filed on 6/23/2003, appellant's refer to a supplemental information disclosure statement filed on 5/6/2003. However, as of 8/10/2003, this supplemental information disclosure statement has not been entered in the file.